

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2017- 381-A

IN RE:

THE IMPACT OF THE TAX CUTS)	MOTION TO PRESERVE
AND JOBS ACT ON SOUTH)	TAX BENEFITS
CAROLINA UTILITIES)	FOR RATEPAYERS
)	

Introduction

The South Carolina Office of Regulatory Staff (“ORS”) respectfully submits this Motion and Proposed Order¹ requesting the Public Service Commission of South Carolina (“Commission”) preserve the savings or benefits from the Tax Cuts and Jobs Act (“Act”) for customers of investor-owned utility companies under the Commission’s jurisdiction (“Utilities”).

Support for the Motion

1. On December 22, 2017, President Donald Trump signed the Act into law. The Act contains provisions including, but not limited to, decreasing the corporate tax rate from 35% to 21% and has an effective date beginning January 1, 2018.²
2. Many Utilities recover federal corporate income tax expenses at the corporate tax rate of 35% through tariff rates charged to utility customers. These tariffed rates may include, but are not limited to, rates approved by the Commission in the following proceeding: general rate, rate stabilization, purchased gas adjustment, fuel adjustment, and demand-side and energy efficiency.
3. Corporate income taxes are recovered by Utilities from ratepayers and booked as an expense.³ Utilities are entitled to an opportunity to earn a fair and reasonable return on investments

¹ See Motion Exhibit 1.

² See the Tax Cuts and Jobs Act, H.R. 1, 115th Cong. § 11001(a)(j)(1) (2017).

³ See Ratemaking in the U.S., by Mark T. Bryant, Ph.D., <https://pubs.naruc.org/pub.cfm?id=53768A01-2354-D714-517A-DC3B4EC72920>

in, or fair value of, the used and useful property which it necessarily devotes to rendering the regulated services.⁴

4. The Commission is vested with the power and jurisdiction to supervise and regulate rates and services of every public utility in this State. S.C. Code Ann. § 58-3-140(A).

5. On December 28, 2017, the ORS filed a Petition (“Petition”) requesting the impacts of the Act be examined and that the Commission Order “the rates in effect on January 1, 2018 be subject to refund such that the ratepayers receive the benefit of the tax changes due to the Act.” In its Petition, ORS requested the Commission require all Utilities report the impact of the Act on the Utility’s operations. The Petition requested that each Utility file an estimate of its determination of the Act’s effects on the most recent test year information available, including an explanation of these effects. Additionally, pursuant to the petition, each utility should propose procedures for changing rates to reflect these impacts.⁵ ORS recognized in its Petition that Palmetto Utilities, Incorporated (“PUI”); Carolina Water Service, Inc. (“CWS”); Synergy Utilities, L.P.; and Moore Sewer, Inc. either had at that time, or currently have rate cases pending before the Commission. ORS recommended that the effects of the Act be addressed as a part of those proceedings. In the PUI, rate case, the Commission stated that the benefits of the Act should be determined in this docket.⁶ In the CWS rate case held April 3-4, 2018, CWS, argued against an effective date of January 1, 2018, on the basis that to pass through certain benefits of the Act would constitute retroactive ratemaking. While ORS does not agree with CWS’s position, the ratepayers must not lose the benefits of the Act due to the pendency of a legal argument or appeal.

6. In Commission Order No. 2018-26, dated January 10, 2018, which did not provide a decision on the effective date of the Act for purposes of accruing benefit to ratepayers, the Commission directed Utilities to file comments and report the impact of the Act no later than January 24, 2018.⁷

7. Duke Energy Carolinas, LLC, (“Duke”) Duke Energy Progress, LLC, and Piedmont Natural Gas Company, in their comments dated January 24, 2018, stated that the difference between the customer revenues actually billed and what would have been billed taking into account

⁴ See S. Bell Tel. & Tel. Co. v. Pub. Serv. Com., 270 S.C. 590, 600, 244 S.E.2d 278, 283 (1978)

⁵ S.C. Code Ann. § 58-27-870(F) provides a mechanism for implementing rate changes that does not require a hearing.

⁶ See Commission Order No. 2018-155, p. 22.

⁷ Notably, no utility raised the issue of retroactive rate making.

the reduced corporate tax rate beginning January 1, 2018, would be deferred as a regulatory liability until the Commission determines the timing and nature of returning such benefits to retail customers. Their comments clearly indicate that they intend for the benefits of the Act to accrue to customers with an effective date of January 1, 2018.

8. South Carolina Electric & Gas Company's ("SCE&G's") filed comments which do not specifically address the beginning date or whether the benefit will be returned to the ratepayer. According to SCE&G's, response, it intends to accrue the benefits of the Act to ratepayers with an effective date of January 1, 2018, provided the merger with Dominion Energy, Incorporated succeeds.⁸ In response to ORS discovery requests, SCE&G estimated that the impact of the reduction in the tax rate is in the 3 – 3.5% range.⁹ ORS is informed and believes that the reduction could be as high as 5%.

9. On March 7, 2018, ORS submitted its recommendations to address the impacts of the Act.¹⁰ These recommendations were based on a review of the actions taken by other state commissions,¹¹ comments provided by the Utilities, and a desire to accrue the tax benefits to ratepayers in a manner that is efficient and reasonable. Additionally, ORS's recommendations were made under the belief and understanding that no Utility contested that benefits accrued to ratepayers with the effective date of the Act, January 1, 2018. ORS clarified in its letter dated March 30, 2018, to the Commission in this docket, this position.¹² Again, no utility filed comments in opposition to the effective date.

10. ORS's position is that South Carolina ratepayers should receive any benefits associated with the Act, that the effective date of January 1, 2018, be recognized as the date on which benefits

⁸ See SCE&G's Comments filed January 24, 2018, wherein it states, "[i]f the Joint Application is approved and if the proposed merger between those companies is concluded, Dominion has committed that it will pass the full amount of tax savings arising from the change in tax law to customers...."

⁹ Motion Exhibit 2.

¹⁰ Commission Order Nos. 2018-75 and 2018-76 deferred action until the Commission received ORS's recommendation.

¹¹ Examples include but are not limited to: The Georgia Public Service Commission approved \$43.6 million in refunds for Georgia Power Customers and ordered Company to show impact of tax cuts on rates; North Carolina Utilities Commission Ordered that certain components of Public Utilities' rates are provisional as of January 1, 2018, and that Utilities should pass on tax savings; the Kentucky Public Service Commission ordered certain utilities to commence recording deferred liabilities to reflect the federal corporate tax rate reduction and the associated savings in excess deferred taxes.

¹² See ORS letter filed March 30, 2018, where it states, "ORS requests that the Commission issue an order...establishing that the effective date for the implementation of the [Act] is January 1, 2018."

began to accrue, and that this Commission should move expeditiously to preserve these benefits.¹³ Income tax expense is an expense on which utilities should have no earnings benefit. While ORS acknowledges that lowering revenues lowers cash flow, allowing Utilities to retain ratepayer funds that properly belong with the ratepayers only serves to inappropriately inflate the cash flow of Utilities.

11. ORS requests that the Commission issue an order directing Utilities which have committed to return the benefits of the Act to their customers effective January 1, 2018, to elect or affirm their commitment within ten (10) days of the Commission's Order. Additionally, ORS requests that the Commission order those Utilities to submit to the Commission no later than May 1, 2018, the estimated amount of the tax benefit, and specify how and when the utility intends to return those benefits to their customers.

12. ORS requests that the Commission direct utilities which have not expressly acknowledged the effective date of the Act as January 1, 2018, and oppose the return of the full benefits of the Act to their customers to file, within ten (10) days of its order in this matter, revised tariffs¹⁴ reflecting the estimated tax savings subject to true-up at a date to be determined by this Commission. These Utilities should also be required to inform their customers of the reason for the rate change and the amount of the tax benefit retained by the Utility between January 1, 2018, and the effective date of the revised tariffs.

13. Ratepayers should not be denied the benefits of the Act. While ORS agrees the implementation of this Act should be performed in a manner that is efficient and reasonable, Utilities should not be permitted to profit from delays in the return of these tax benefits.¹⁵

WHEREFORE, ORS requests the Commission issue an Order

(1) requiring Utilities which have committed to return benefits of the Act to their customers effective January 1, 2018, to elect or affirm their commitment to the Commission within

¹³ The Commission has previously faced a similar situation following the passage of The Federal Tax Reform Act of 1986. (See Order No. 1986-1290 in Docket No. 1986-622-E). In the 1986 proceeding, Duke and the former Carolina Power & Light (currently known as Duke Energy Progress, LLC) filed revised tariffed rates implementing that tax reform. Whereas, SCE&G utilized the tax reduction by reducing expenses and thereby passing tax benefits on to its customers.

¹⁴ The Commission may want to direct that these utilities implement a decrement rider.

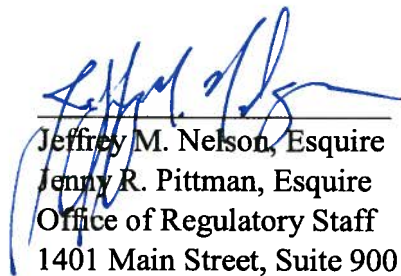
¹⁵ The prospective return of the benefits of the Act does not constitute retroactive ratemaking, but the failure of a Utility to return the benefits does result in a windfall for the Utility. ORS will not sit idly but will act to preserve these benefits for the ratepayer.

ten days of the Commission's order and that they report by May 1, 2018, the estimated savings, and when and how, the Utility proposes to return these tax benefits to their ratepayers;

(2) requiring Utilities that contest ratepayers right to recover for the federal tax differential effective January 1, 2018, to submit within ten days of the Commission's order revised tariffs reflecting the estimate savings subject to true-up at a date to be determined by this Commission in a subsequent order and inform the customers of the rate change and the amount of the tax benefit retained; and

(3) any other relief deemed by the Commission to be appropriate.

Respectfully submitted,



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Exhibit 1

**BEFORE THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NO. 2017-381-A – ORDER NO. 2018-__

APRIL __, 2018

IN RE: Office of Regulatory Staff's Petition for an Order Requiring Utilities to Report the Impact of the Tax Cuts and Jobs Act)))))	PROPOSED ORDER RULING ON MOTION TO PRESERVE TAX BENEFITS
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I. INTRODUCTION

This matter is before the Public Service Commission of South Carolina ("Commission") pursuant to a Motion to Preserve Tax Benefits for Ratepayers ("Motion") filed by the South Carolina Office of Regulatory Staff ("ORS") with this Commission on April 6, 2018.

In the Motion, ORS requested:

1. that investor-owned utility companies under the Commission's jurisdiction ("Utilities") which commit to return benefits of the Act to their customers effective January 1, 2018, be required to elect or affirm their commitment to the Commission within ten days of the Commission's order and that they report by May 1, 2018, the estimated savings, and when and how, the Utility proposes to return these tax benefits to their ratepayers; and
2. Utilities that contest ratepayers' right to recover for the federal tax differential effective January 1, 2018, be required to submit within ten days of the Commission's order revised tariffs reflecting the estimate savings subject to true-up at a date to be determined by this Commission in a subsequent order and inform the customers of the rate change and the amount of the tax benefit retained.

II. REVIEW OF THE EVIDENCE AND EVIDENTIARY CONCLUSIONS

As a result of the Tax Cuts and Jobs Act (“Act”), which became effective January 1, 2018, the corporate income tax rate decreased from 35% to 21%.¹ Many Utilities recover federal corporate income tax expenses through tariff rates charged to utility customers. These tariffed rates may include, but are not limited to, rates approved by the Commission in the following proceeding: general rate, rate stabilization, purchased gas adjustment, fuel adjustment, and demand-side and energy efficiency. Utilities are not entitled the opportunity to earn a return on taxes, which are booked as expenses.² Furthermore, the Commission is vested with the power and jurisdiction to supervise and regulate rates and services of every public utility in this State.³

ORS’s Motion acknowledged one Utility has claimed that to require it to pass through the benefits of the Act to its customers with an effective date of January 1, 2018, would constitute retroactive ratemaking. However, the Motion requests that the rates of Utilities that contest ratepayers right to recover for the federal tax differential effective January 1, 2018, be impacted only on a prospective basis. Therefore, there is no retroactive ratemaking.

A similar issue was encountered in 1986, when The Federal Tax Reform Act of 1986 was passed. In 1986, this Commission issued Order 1986-1290, which implemented the reduction of rates and charges to be effective for service rendered on and after January 1, 1987.

III. FINDINGS OF FACT

1. Many Utilities recover federal corporate income tax expenses at the corporate tax rate of 35% through tariff rates charged to utility customers.

¹ See the Tax Cuts and Jobs Act, H.R. 1, 115th Cong. § 11001(a)(j)(1) (2017).

² See *S. Bell Tel. & Tel. Co. v. Pub. Serv. Com.*, 270 S.C. 590, 600, 244 S.E.2d 278, 283 (1978)

³ S.C. Code Ann. § 58-3-140(A).

2. As a result of the Act, Utilities' Corporate Income Tax has decreased from 35% to 21%.
3. Utilities are not entitled the opportunity to earn a return on taxes.
4. Utilities should return the benefits derived from the Act, and to which the Utilities have no right, to ratepayers.

IV. CONCLUSIONS OF LAW

Based upon the Discussion, Findings of Fact as set forth herein, and the record of the instant proceeding, the Commission makes the following Conclusions of Law:

1. The Commission is vested with the power and jurisdiction to supervise and regulate rates and services of every public utility in this State.

IT IS THEREFORE ORDERED THAT:

1. Utilities which commit to return benefits of the Act to their customers effective January 1, 2018, must affirm their commitment to the Commission within ten days of this Order and must report by May 1, 2018, the estimated savings, and when and how, the Utility proposes to return these tax benefits to their ratepayers.
2. Utilities that contest ratepayers right to recover for the federal tax differential effective January 1, 2018, must submit within ten days of this Order revised tariffs reflecting the estimate savings subject to true-up at a date to be determined by this Commission in a subsequent order and inform the customers of the rate change and the amount of the tax benefit retained.
3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Swain E. Whitfield, Chairman

ATTEST:

Comer H. “Randy” Randall, Vice-Chairman

**SOUTH CAROLINA ELECTRIC & GAS COMPANY
OFFICE OF REGULATORY STAFF'S CONTINUING AUDIT INFORMATION
REQUEST
DOCKET NO. 2017-207-E (2nd Continuing AIR)
DOCKET NO. 2017-305-E (1 st Continuing AIR)
DOCKET NO. 2017-370-E (1 st Continuing AIR)**

REQUEST 1-174:

In the merger benefit, the tax law reduction is estimated at 1.5%. Has the 1.5% estimate changed and if so, explain.

RESPONSE 1-174:

At this time, we continue to evaluate the effects of tax reform on SCE&G's rates charged to customers. Based on Dominion Energy's evaluation of the impact of tax reform on its regulated subsidiaries rates charged to customers, we anticipate the impact of the reduction in the tax rate is greater than 1.5%, potentially in the 3-3.5% range. This analysis is ongoing and we will provide an update once it is complete.